

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,233
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) closing her registration to operate a family day care home. The issue is whether the Department's decision is in accord with the pertinent statutes and regulations.

FINDINGS OF FACT

The essential facts are not in dispute. The petitioner has operated a family day care home off and on for several years. Her most recent registration was closed on September 2, 1997, after SRS received information from the Vermont Criminal Information Center that in February and March, 1997, the petitioner had been convicted of misdemeanor passing of bad checks.

The petitioner was allowed to continue to operate her day care while the Department considered her reapplication.

By letter dated September 4, 1997, SRS informed her that subsidy payments to any children that remained in her care while she was not registered would not be authorized. The petitioner, thinking that her reapplication would be granted, continued to provide care for children whose parents received day care subsidies from SRS.

On October 15, 1997, SRS informed the petitioner by letter that because of her criminal convictions her reapplication for registration had been denied and that she could no longer operate her day care.

The petitioner does not dispute those convictions, but she maintains that the crimes occurred during a difficult financial period in her life (August, 1996) when she was not operating her day care. She maintains that she quickly realized the error of her ways, pleaded guilty to the crimes, and promptly made restitution. She also indicated that she plans to apply to the Governor for a pardon because she didn't realize her guilty pleas would affect her livelihood.

SRS admitted that these convictions are the only basis of its decision to deny the petitioner a registration, and that if the petitioner was pardoned for the crimes it would reissue her a registration to operate a day care.

By letter dated February 9, 1998, SRS allowed the petitioner payment to cover the period September 2 through 12, 1997, for those children in her day care whose parents qualified for a day care subsidy. SRS explained that this was in accord with its policy of allowing ten days after a registration is closed to allow parents to obtain alternative day care. The petitioner is seeking reimbursement for those children through October 15, 1997, when SRS informed her that her reapplication for

registration had been denied. Although she continued to provide care for children until that date thinking that her application would ultimately be approved, she admits she was informed of SRS's policy regarding reimbursement, and she does not maintain that she was misled by SRS into believing that her application would be granted.

ORDER

The Department's decision is affirmed.

REASONS

33 V.S.A. § 306(b)(3) and 3 V.S.A. § 814 authorize the Commissioner of Social and Rehabilitation Services to issue licenses for day care facilities, promulgate regulations applicable to those facilities, and to deny or terminate licenses for "cause after hearing". Among the regulations promulgated by the Commissioner is the following, which appears in the Department's Regulations for Family Day Care Homes:

Section I, No. 4 - The following persons may not operate, reside at, be employed at or be present at a family day care home:

- a. persons convicted of fraud, felony or an offense involving violence. . . .

As noted above the petitioner does not dispute that she was convicted of passing bad checks. Although this was

neither a felony nor a crime of violence, it must be concluded that it constituted "fraud" within the meaning of the above regulation. Although it also appears that this was an isolated occurrence and that she is otherwise of good character, the Board has expressly upheld the Department's policy that the above regulation imposes an absolute bar to persons with such criminal records from operating a family day care home. See Fair Hearing No. 14,993.

Thus, it cannot be concluded that the Department abused its discretion in determining that the violation of this regulation was "cause" for revocation and denial of the petitioner's day care registration; and the Board is, therefore, bound by law to affirm the Department's decision.

3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

Absent any showing that SRS misinformed the petitioner about her eligibility to receive day care subsidies for children once her registration was revoked and during the pendency of her reapplication, the Department's decision denying her further reimbursement for those children must also be affirmed.

#